



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**Region 1
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BOSTON, MA 02109-3912**

BY ELECTRONIC MAIL

July 10, 2020

Ms. Sue Zimskind
Deputy State Director
The Honorable Patrick J. Toomey
248 Russell Senate Office
Washington, D.C. 20510
sue_zimskind@toomey.senate.gov

RE: GE-Pittsfield/Housatonic River Superfund Site, RAF DES CLIN001

Dear Ms. Zimskind:

Thank you for contacting the U.S. Environmental Protection Agency (EPA). I have been asked to respond to Senator Toomey's letter addressed to Joseph Brazouskas, EPA's Associate Administrator for Congressional Affairs, dated June 18, 2020, on behalf of the Senator's constituent, Thomas Myers, Jr., Vice President and General Counsel of Bluestone Environmental Group Incorporated (Bluestone). Senator Toomey's letter requested that EPA direct its response to you.

In his letter, Senator Toomey notes that Mr. Myers contacted the EPA's Office of the Inspector General (OIG) regarding the GE-Housatonic River project. Further, the letter asks that EPA provide a response to Mr. Myers' appeal to the OIG. My staff at EPA Region 1 in Boston, MA, contacted the OIG regarding Bluestone's April 22, 2020, letter to the OIG. OIG stated that they will respond to you directly on the status of your constituent's request.

I would like to provide additional details related to the overarching issue raised by Mr. Myers for your information. To be clear, EPA has no contractual relationship with Bluestone. Bluestone acquired Avatar Environmental, LLC (Avatar) on January 1, 2019. At that time, Avatar held a contract with the U.S Army Corps of Engineers, New England District (CENAE) to provide services at the GE-Housatonic River site in Pittsfield, Massachusetts. The task order contract that currently provides support to the site expires September 30, 2020.

In October 2019 the CENAE initiated a solicitation for a new contract for the GE-Housatonic River site. Pursuant to an Interagency Agreement between CENAE and EPA, CENAE follows their own internal procurement process when initiating open, competitive contracting opportunities. In such instances, EPA provides the technical requirements for specific work to be included in a contract, and the CENAE determines how such requirements will be solicited and awarded. Each new procurement has its own requirements and criteria for applying the

competitive process in accordance with Federal Acquisition Regulations. While past performance can be considered as one criterion for evaluating solicitation responses, other criteria are also considered. The CENAE cancelled the October 2019 solicitation before any contract was awarded.

In 2015, EPA approved the Remedial Acquisition Strategy, which implements the Remedial Action Framework (RAF). RAF is used for acquiring services to support the Superfund remedial program. RAF aligns with presidential and Office of Management and Budget directives, maximizes competition to realize cost efficiency and strengthens EPA's contract management processes. RAF provides a suite of nationally awarded contracts. The RAF contract process allows EPA to competitively solicit site-specific task orders to improve efficiency across the remedial program. Additionally, the RAF contracts are the EPA's choice for acquiring remedial acquisition services. This is the appropriate and prescribed method for acquiring these services across EPA.

Given the cancellation of the CENAE solicitation for the GE-Housatonic River project, EPA has initiated the RAF process for certain work at the site. As part of this process, EPA announced its intent to award a task order for specified work under the RAF/Design and Engineering Services (DES) contract. The RAF process allows for a fair and open competition amongst the pre-selected/awarded prime contractors. Bluestone is not a prime contractor under the DES contract. Following the solicitation, Bluestone filed a formal agency level protest with EPA in relation to this planned action. The EPA contracting officer dismissed this protest. I am providing the following excerpts from the contracting officer's protest decision to explain part of the basis for this dismissal:

"Per [Federal Acquisition Regulation] FAR 33.103(d)(1) & (2)(vii), anyone filing an agency level protest must be an interested party or the protest may be dismissed. FAR 33.101 defines an interested party as an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. As a prospective subcontractor, as opposed to a prospective prime contractor under the RAF DES CLIN001, Bluestone Environmental Group (Bluestone) does not qualify as an interested party under the FAR in that its economic interest in the award of this contract is not direct.

Furthermore, as required by FAR 33.103(d)(2)(iii), Bluestone fails to provide any legal or factual grounds for its protest of the RAF DES CLIN001. Instead, Bluestone's protest appears to center around the cancellation of the Army Corps of Engineers CENAE solicitation. Any agency level protest regarding the cancellation of that solicitation by the Army Corps of Engineers should have been filed with the Army Corps of Engineers, not EPA. This absence of any legal or factual grounds of protest regarding the RAF DES CLIN001 perhaps explains Bluestone's failure to request a ruling from EPA in this case as required by FAR 33.103(d)(2)(v)."

A full copy of the contracting officer's final dismissal decision is attached to this letter.

To summarize, I appreciate the concerns raised by your constituent and hope this letter and the attached RAF process protest dismissal provides helpful clarity. Also, as stated above, please expect a direct response from OIG regarding the status of Mr. Myers' letter to OIG.

Thank you for your interest in this matter, and please do not hesitate to contact me with further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Deziel". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Dennis Deziel
Regional Administrator

Enclosure